

REMARKS

Please reconsider the present application in view of the above amendments and following remarks. Applicants thank the Examiner for carefully considering the present application.

By way of this reply, claims 1-4 and 6-18 have been amended, claim 5 has been canceled, and claims 19-29 have been added. Claims 1-4 and 6-29 are pending upon entry of this amendment.

Response to Objection to Specification

In paragraphs 3 and 4 of the Office Action, the Examiner objected to the specification because paragraph [0047] of the specification attempts to incorporate subject matter of a co-pending application without listing its complete patent application serial number.

Applicants have amended paragraph [0047] to specify the complete patent application serial number of the co-pending application and request the withdrawal of the objection. Applicants respectfully submit that the material being inserted is the material incorporated by reference and the amendment contains no new matter.

Response to Claim Rejections Under 35 USC 101

In paragraph 5 of the Office Action, the Examiner rejected claims 11-18 under 35 USC § 101 as allegedly directed to non-statutory subject matter. Particularly, the Examiner indicated that claims 11-18 are non-statutory because they are allegedly directed toward a computer-readable medium which "is intended to include wireless media, which is a signal

[... which] does not fall within one of the four statutory classes of § 101.” See instant Office Action, paragraph 5.

Applicant does not concede that any of the embodiments in the specification (e.g. wireless transmission channel) is a non-statutory embodiment. However, to expedite prosecution of the application, Applicant has amended claims 11-18 to recite a “computer-readable storage medium.” Applicant submits that the addition of “storage” limits the claims to only cover tangible physical embodiments and thereby renders the claims statutory.

Accordingly, in view of the above, claims 11-18 are at least now directed to statutory subject matter under § 101. Accordingly, withdrawal of the § 101 rejections is respectfully requested.

Response to Claim Rejections Under 35 USC 102 in View of Moshir

In paragraphs 6 and 7 of the Office Action, the Examiner rejected claims 1-3, 11, and 12 under 35 USC § 102(e) as allegedly being anticipated by U.S. Patent No. 6,990,660 to Moshir, et al. (“Moshir”). Applicants respectfully traverse these rejections as applied to the amended claims.

Independent claim 1 as amended recites:

A method for installing a software component on a computing device without adversely impacting other software applications on the computing device, the method comprising:
monitoring resource usage by software applications running on the computing device;
determining a need of the computing device for a software component; and

initiating an installation of the software component on the computing device during a time period selected based on the determined need and the monitored resource usage that does not adversely impact the software applications.

As amended, independent claim 1 beneficially recites a method for installing a software component on a computing device without adversely impacting other software applications on the computing device. The method monitors resource usage by software applications running on the computing device, determines a need of the computing device for a software component, and initiates an installation of the software component on the computing device during a time period selected based on the determined need and the monitored resource usage that does not adversely impact the software applications.

Moshir, among other differences, does not disclose “initiating an installation of the software component on the computing device during a time period selected based on the determined need and the monitored resource usage that does not adversely impact the software applications.” Moshir discloses methods and systems for discovering computers in need of software updates and updating the computers with the software updates. See Moshir, Abstract.

Moshir briefly discussed scheduling a software download during after hours when the recipient computer is less likely to be used. See Moshir, col. 10, lines 7-18, and item 312 in FIG. 3. Scheduling a download during after hours is different from installing a software component in a computer device during a time period selected based on monitored resource usage by software applications running on the computing device. The former process schedules download at a time at which the computer is statistically less likely to be used. The later process chooses a time period based on resource usage monitored in the computing

device, and initiates an installation in the computing device during a time period that does not adversely impact software applications running on the computing device. Because the installation is initiated during a time period selected based on monitored resource usage, it can be any time of the day, as long as the installation does not adversely impact other software applications running on the computing device. In contrast, scheduling a download during after hours may well adversely impact software applications running on the downloading computer. For example, the download may exhaust a computer's network bandwidth, causing network backup application running on the computer to slow down.

In view of the above, Moshir fails to disclose each and every limitation recited in independent claim 1. Thus, independent claim 1 is patentably distinguishable over the cited reference for at least the reasons discussed above. Independent claim 11 and the dependent claims are allowable for at least the same reasons. Accordingly, withdrawal of the § 102 rejection is respectfully requested.

Response to Claim Rejections Under 35 USC 103 in View of Moshir and Ly

In paragraphs 8 and 9 of the Office Action, the Examiner rejected claims 4-10 and 13-18 under 35 USC § 103(a) as allegedly being unpatentable over Moshir in view of U.S. Patent No. 6,971,094 to Ly ("Ly"). Applicants respectfully traverse these rejections as applied to the amended claims.

Claim 5 is canceled and claims 4 and 6-10 depend from independent claim 1, and dependent claims 13-18 depend from independent claim 11. As argued above with respect to independent claim 1, Moshir fails to disclose the claimed limitation of "initiating an installation of the software component on the computing device during a time period selected

based on the determined need and the monitored resource usage that does not adversely impact the software applications” of independent claim 1. Ly similarly fails.

Ly discloses methods and systems for a managing computer to manage applications residing on one or more managed computers. See Ly, Abstract and Summary. The managing computer transmits an agent to a managed computer. The agent determines a best time to transfer data from the managing computer to the managed computer based on network connection speed between the two computers. For example, the agent stops all network applications on the managed computer when the network connection speed is below a predetermined threshold. See Ly, Summary. A best time to transfer data does not mean the transfer will not adversely impact other software applications. In fact, transmitting data between two computers may adversely impact software applications running on the two computers, no matter what the network connection speed between the two computers is. For example, the network connection speed between the two computers may be high, and the transmission may exhaust the managed computer’s network capacity, causing other applications running on it to slow down. Therefore, Ly does not teach or suggest at least the above cited claimed elements.

In view of the above, Moshir and Ly, whether considered singly or in combination, fail to disclose each and every limitation recited in independent claim 1. Thus, independent claim 1 is patentable over Moshir and Ly for at least this reason. Independent claim 11 and the dependent claims are allowable for at least the same reason. Accordingly, withdrawal of the § 103 rejections is respectfully requested.

Conclusion

Applicants have added new claims 19-29 for which Applicants request consideration and examination. Applicants respectfully submit that these are supported by the specification and are commensurate within the scope of protection to which Applicants believe they are entitled.

In sum, Applicants respectfully submit that claims 1-4 and 6-29, as presented herein, are patentably distinguishable over the cited references. Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them.

Should the Examiner wish to discuss the above amendments or if the Examiner believes that for any reason direct contact with Applicants' representative would help to advance the prosecution of this case to finality, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully Submitted,
Stephen R. Lawrence, et al.

Date: February 4, 2008 By: /Jie Zhang/

Jie Zhang, Attorney of Record
Registration No. 60,242
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7297
Fax: (650) 938-5200